



DEPARTMENT OF THE ARMY  
U.S. ARMY CORPS OF ENGINEERS  
441 G STREET NW  
WASHINGTON, D.C. 20314-1000

CECW-I

SEP 17 2010


MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Operations under a Fiscal Year 2011 Continuing Resolution – Civil Works Program

1. It is expected that the Civil Works Program will begin Fiscal Year (FY) 2011 under a Continuing Resolution (CR). Subject to additional Executive Branch guidance and the provisions of the CR, and except as provided in the enclosed guidance, management of the Civil Works program under the CR will continue to be conducted in accordance with the Energy and Water Development and Related Agencies Appropriations Act (E&WDAA), 2010, P.L. 111-85, and the accompanying Conference Report (H.R. 111-278), as reflected in Engineer Circular 11-2-198, Change No. 1.
2. Highlights of the enclosed guidance are as follows.
  - a. The definition of Program, Project, or Activity (PPA) is modified effective 1 October 2010.
  - b. Management procedures for the Continuing Authorities Program (CAP) are modified effective 1 October 2010.
  - c. No CR funds may be allotted to a PPA unless it received funds in FY 2010 through either the FY 2010 E&WDAA, FY 2010 supplemental appropriations (P.L. 111-212), or a reprogramming. No CR funds may be issued to CAP projects or CAP coordination without Headquarters approval. No CR funds will be available for the Flood Control and Coastal Emergencies appropriation.
  - d. The reprogramming baselines and limits as of 30 September 2010 will remain in effect for PPAs during the CR period. For each PPA, all reprogrammings in FY 2010 on or after the date of the FY 2010 E&WDAA and reprogrammings during the CR period count toward the limit.
  - e. CR funds may be allotted to each PPA only to the extent needed to support obligations during the CR period. Further, obligations of CR funds to continuing contracts must be limited to the amounts needed to pay earnings under the contract terms during the CR period.
3. My point of contact is Mr. Gary Loew, Chief, Civil Programs Integration Division who can be reached at 202-761-4100.

FOR THE COMMANDER:

Encl

  
STEVEN L. STOCKTON, P.E.  
Director of Civil Works

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SUBJECT: Operations under a Fiscal Year 2011 Continuing Resolution – Civil Works Program

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SUBJECT: Operations under a Fiscal Year 2011 Continuing Resolution – Civil Works Program

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Programs Management  
FISCAL YEAR 2011 DIRECT AND REIMBURSED PROGRAMS – CIVIL WORKS  
CONTINUING RESOLUTION

CECW-I

30 September 2010

Operational Guidance

**1. Purpose.**

a. This document governs execution of Corps of Engineers (Corps) programs and projects using funds appropriated for Fiscal Year (FY) 2011 as authorized by a Continuing Resolution (CR). This document also governs execution following enactment and pending apportionment of annual appropriations for Civil Works. This guidance is subject to change to reflect the FY 2011 Continuing Resolution Act and Executive Branch guidance. This document provides guidance and is not to be construed as an official legal opinion regarding any particular item in Act language or accompanying reports.

b. Except as provided in this guidance, management of the Civil Works appropriated program will continue to be conducted in accordance with guidance contained in the Energy and Water and Related Agencies Appropriations Act, 2010, Public Law 111-85, and the accompanying Conference Report (House Report 111-278), as reflected in EC 11-2-198, Change No. 1.

**2. Applicability.** This guidance applies to all HQUSACE elements, Division commands, Field Operating Agencies (FOAs), and District commands having Civil Works responsibilities. It is applicable to all Civil Works appropriations, except for appropriations under the American Recovery and Reinvestment Act of 2009 (see EC 11-2-195). District and Division commands and FOAs shall inform CECW-I of any problems with the implementation of this guidance.

**3. References.**

a. ER 37-1-28, Financial Administration - Continuing Resolution Authority, paragraphs 5 and 6, 30 November 2001.

b. ER 37-2-10, Financial Administration - Accounting and Reporting - Civil Works Activities, paragraph 6-10c (1), 1 April 1969, as amended.

c. EC 11-2-198, Change No. 1, Execution of the Annual Civil Works Program, 7 January 2010.

d. DoD(AT&L) Defense Procurement and Acquisition Policy, subject: Class Deviation: Defense Federal Acquisition Regulation Supplement (DFARS) 232.705-70 and 252.232-7007 (Oct. 27, 2009).

e. DoD Financial Management Regulation (FMR), Vol. 3, Chapter 2.

f. Senate Report 111-228 on Energy and Water Development and Related Agencies Appropriations, 2011.

**4. Direct Program.** Pending final FY 2011 appropriations and the associated apportionment and issuance of work allowances and Funding Authorization Documents (FADs), the following guidance will govern use of FY 2011 Civil Works direct discretionary funds.

a. Apportionment of FY 2011 Funds under the CR. HQUSACE anticipates that the Office of Management and Budget will automatically apportion FY 2011 funds for the CR period (CR funds). The amount automatically apportioned is equal to the amount of regular (excluding supplemental) funds enacted for FY 2010, times the percentage of historical obligations that have taken place in periods equal to the CR period. HQUSACE also may request written apportionment for certain appropriations.

b. Allotment of FY 2011 Funds under the CR. Resourcing under a CR is intentionally constrained to marginal levels by law. The intent is to finance continuing operations at levels of obligation and expenditure that are not detrimental to Congressional prerogatives.

(1) HQUSACE will determine the fractional portion of apportioned funds for each appropriation to be allotted to each Division or FOA. HQUSACE Resource Management Division will allot the CR funds for each appropriation by FAD to Divisions and FOAs. No work allowances for CR funds will be issued pending apportionment of final FY 2011 appropriations; however, work allowances will be issued for carried-over undistributed funds and funds previously revoked (reprogrammed) by HQUSACE.

(2) Each Division is responsible for allotting CR funds in the applicable appropriations to districts, by appropriation title. Divisions' distributions to subordinate Districts are formal allotments. Obligating or expending CR funds in excess of such an allotment constitutes an Anti-Deficiency Act violation.

(3) Work does not migrate among appropriations during the CR period. A type of work that was funded from a particular account in FY 2010 will be funded from the same account under the CR.

(4) Programs, Projects, and Activities (PPAs) – New Definition.

(a) A program, project, or activity (PPA) is a specifically authorized project study, project, or program funded in the I, C, O&M, or MR&T appropriation, or a project funded in the FUSRAP appropriation, or work that has received an allocation in the most recent Act providing annual appropriations for Energy and Water Development, or work that has received a specified amount in a first-tier line item in a table of allocations in the Statement of Managers accompanying the Act.

(b) A first-tier line item is a line item that received a specified amount not in parentheses, or that did not receive a specified amount but is grouped with first-tier line items that did. A sub-item is a line item that is named with an amount in parentheses, or

that is named without an amount and is grouped with line items with amounts in parentheses.

(c) Work within a first-tier line item also is a PPA if it is a specifically authorized project study, project, or program in the I, C, O&M, or MR&T appropriation. A project study, project, or program is considered specifically authorized and therefore a PPA if it is not within a Remaining Item and has been assigned its own Program Code.

(d) While first-tier Remaining Items are PPAs, items of work within the first-tier Remaining Items are not PPAs, as they are not specifically authorized. Examples include Continuing Authorities Program (CAP) projects, Planning Assistance to States studies, and Floodplain Management Services studies. No CAP projects are considered specifically authorized, even those that individually have been modified in an Act but still are to be carried out under the CAP program.

(5) CR funds may not be allotted to a PPA that did not receive funds in FY 2010, either through the FY 2010 E&WDAA or through a reprogramming.

(6) No allotment of CR funds will be made to any new start reconnaissance studies, new start construction projects, including new start separable elements of projects, or any other new start PPAs. Furthermore, no previously unfunded feasibility phase of a study or PED phase will be initiated using CR funds unless that phase is funded in the tables in both the House and Senate reports for FY 2011.

(7) Divisions and FOAs may not allot any CR funds to a specifically authorized PPA for which neither the House report nor the Senate report identifies funds. If the House report or the Senate report provides a positive amount for a specifically authorized PPA, the amount of CR funds allotted to that PPA may not exceed the lesser of the House amount or the Senate amount, which could be zero in either case. Exceptions to the "lesser of" rule may be made when the Division or FOA coordinates with the HQUSACE appropriation manager or program manager, identifying potential source PPA or PPAs within the Division or FOA from which funds would be moved in the event that a reconciliation is required after enactment of regular FY 2011 appropriations.

(8) Subject to the above limitations, CR funds may be allotted among PPAs disproportionately, that is, a higher percentage of funds available under the CR may be allotted for a PPA with high funding requirements (e.g., award of a fully funded contract) during the CR period and a smaller percentage of funds available under the CR may be allotted for a PPA that will have few funding needs during the CR period. However, the sum of allotments to PPAs in each Division may not exceed the amount allotted to that Division by FAD.

(9) Continuing Authorities – New Guidance. No CR funds may be allotted to Continuing Authorities Program (CAP) projects or CAP Coordination without the approval of the HQUSACE Program Manager. Rather, the Program Manager will arrange to fund selected CAP projects through the allocation of carried-in FY 2010 funds or reallocations (see paragraph 4.c.(5)(a)).

(10) Remaining Items. A work item within a Remaining Item (other than CAP) may receive CR funds if all of the following conditions are met.

(a) The Remaining Item, which is a PPA, is eligible for CR funds in accordance with the above limitations; and

(b) Either the work item is specified in either the House report or the Senate report or, within the lesser of the House amount or the Senate amount for the Remaining Item, funds would be available not only for all work specified in the House and Senate reports but also for the particular work item, and the particular work item is approved for CR funding by the HQUSACE Remaining Item program manager; and

(c) Any additional conditions established by the HQUSACE Remaining Item program manager are met.

(11) CR funds should be allotted only to the extent they can be obligated during the period of the CR, thereby minimizing potential reconciliation or reprogramming problems.

(12) When allotting CR funds to PPA's prosecuted by contracts that include the DFARS "alternate" (incremental funding) clause at DFARS Part 252.232-7007, Divisions should plan allotments that meet the allotment schedule in subparagraph (i) of that clause to avoid funding shortfalls that would require termination of line items or the contract. If planned allotments would require termination of line items or the contract, contact CECW-I prior to the allotment of funds.

(13) Flood Control and Coastal Emergencies Appropriation. No CR funds will be available for the Flood Control and Coastal Emergencies (FC&CE) program. FC&CE-funded activities may be resourced during the CR period using existing unallocated carryover funding. As a result, program requirements during the CR period may be limited to those activities that are necessary to maintain essential emergency readiness and response capabilities. The following guidance applies to the FC&CE program during the CR period:

(a) Funding allocations for the first quarter FY 2011 will be adjusted to account for already allocated unobligated carry-in funds and will be limited to activities necessary to address emergency management employee salaries and facility costs, conduct scheduled inspections of non-federal flood damage reduction projects, perform critical emergency response training, award and maintain necessary emergency contracts and operate and maintain emergency information systems (EngLink) and Deployable Tactical Operation Systems (DTOS), and conduct emergency response operations.

(b) Funds already allocated for work on rehabilitation, drought, and advance measure projects will continue. Allocations to new project activities during the CR period will be prioritized and resourced if funding is available.

(c) The following activities will not be funded during the CR period: improvements to existing EOC/Office facilities and/or equipment enhancements to include supplies, and

other operational items for an Alternate EOC; new leases or contract initiatives; and hiring for vacant/new positions unless specifically approved by CECW-HS.

c. Obligation and Execution of FY 2011 Funds under the CR.

(1) New contracts may be awarded with CR funds for any project eligible for CR funds in accordance with paragraph 4.b.

(2) Contracts (including base contracts) of \$20 million or less in the C account and the MR&T (C) account must be fully funded unless an alternative is approved by CECW-I in advance.

(3) Continuing Contracts.

(a) Since CR funds are limited, it is critical to include the paragraph below in any new contract awarded during the CR period that employs the "true" continuing contract clause (EFARS Part 252.232-5001) or the "primary" (special) continuing contract clause approved by DOD for DFARS 232.705-70, and in contract notices during the CR period for any ongoing contract that employs either clause.

"Congress has appropriated limited funds through a stop-gap Continuing Appropriations act. Accordingly, pending enactment of the FY 2011 Energy and Water Development Appropriations and subsequent apportionment, we must reserve funds for your contract on a limited basis. The amount reserved for your contract through [insert the appropriate date] is \$xxx,xxx,xxx. After enactment of the Energy and Water Development Appropriations and apportionment, we will advise in writing of the amount reserved for your contract."

(b) For each reservation of funds, the appropriate date to be inserted is no later than the last day of the CR period. The amount reserved must be limited to the incremental amount (beyond carried-in undelivered orders on the continuing contract and carried-in unobligated funds on the PPA not needed for labor) needed to pay expected earnings under the contract terms for that contract through the date specified.

(4) Obligations of CR funds for labor should be limited to labor costs incurred during the CR period. Where the end of the CR period is sooner than the end of a pay period, CR funds should be obligated only for the portion of the pay period falling in the CR period.

(5) Reprogrammings and Reallocations.

(a) A reprogramming is a movement to or from a PPA of funds previously allocated to the PPA, with three exceptions: a) a reconciliation (see paragraph 4.g.); b) the initial movement of funds from a higher-level PPA to a lower-level PPA within that PPA (such as to a sub-basin project within a basin project); and c) the pass-through allocation of funds from a "Funding Pot" Remaining Item (see EC 11-2-198, Appendix I) to studies and projects.



- The revocation from a PPA of funds previously allocated through a work allowance is a reprogramming.
- The allocation to a PPA of funds previously revoked from another PPA (including previously revoked funds that are part of the undistributed balance for the appropriation) is a reprogramming.

(b) A reallocation is a movement of funds previously allocated through a work allowance that does not qualify as a reprogramming or reconciliation. Reallocations include movements of funds within PPAs into or out of work items that are not themselves PPAs, such as movements of funds between study phases or between P2 projects within a Program Code.

(c) During the CR period and the period pending apportionment of annual energy and water development funds, a re-allotment of CR funds among PPAs (movement in CEFMS from the project funding account of one PPA to that of another PPA) is a reprogramming, except in the case of the re-allotment of funds from a higher-level PPA to a lower-level PPA within that PPA.

(d) The baseline amount for each PPA as of 30 September 2010 will be used during the CR period for determining the reprogramming limits under the CR, and will not be recalculated to include FY 2011 CR obligation authority. Reprogramming actions accomplished in FY 2010 after enactment of Public Law 111-85, as well as those accomplished during the CR period, are to be included in determining the cumulative amount of reprogrammings involving each PPA.

(e) Reallocation of Surplus CAP Funds – New Guidance. CAP funds that have been allocated to CAP projects and are identified by Districts as available for reallocation by HQUSACE, including funds specified for CAP projects in a Statement of Managers for FY 2010 or before, will be reallocated to affordable projects in accordance with the guidance below.

- For each CAP section, the HQUSACE Program Manager will identify carried-in undistributed FY 2010 funds, obtain from the Districts project-specific data on funds available for reallocation by HQUSACE, and make assumptions about FY 2011 appropriations. The sum is the amount for each CAP section estimated to be available for distribution or reallocation in FY 2011. The estimate will be updated in the month prior to each fiscal quarter, after District coordination with project sponsors. The Program Manager also will make assumptions about out-year appropriations.
- The Districts will provide estimates of project-specific capabilities, by phase, for FY 2011 and FY 2012 by quarter, and for FY 2013 through FY 2015 by fiscal year. These estimates will be updated in the month prior to each fiscal quarter, after District coordination with project sponsors.
- Assuming that each identified project is funded through the distribution or reallocation of funds at the capability level, subject to policy, until completion of the

applicable phase, the Program Manager will identify a list of affordable CAP projects for each CAP section and will assign funds to each affordable project for FY 2011. Section 14 projects will be identified for funding based on risks and consequences, irrespective of project status. For other sections, priorities for determining affordable projects will be as follows: 1) Active projects with executed agreements for the applicable phase, Coordination, and Active projects for which no agreement is required for the applicable phase; 2) Active projects for which execution of the agreements for the applicable phase is scheduled for FY 2011; 3) other Active projects that already are funded for the applicable phase and that qualify for additional funding for the applicable phase; and 4) projects never funded for the applicable phase. Within each of these four groups, priority will be given to projects with the highest performance, projects that are closest to fiscal completion of the phase, and projects that contribute to the targets of about 20 percent of funds for Feasibility and about 80 percent of funds for D&I within the CAP section.

- If no FY 2010 funds remain undistributed at the beginning of a fiscal quarter, the Program Manager will arrange for the reallocation of funds in offsetting transactions from specific projects for which the MSCs have identified surpluses to the affordable projects in the same CAP section, as needed. The cumulative amount reallocated or distributed to a CAP project through a given quarter will be equal to its cumulative capability through that quarter, but not to exceed the amount assigned. However, if an agreement is required for the applicable phase but has not been executed, the total amount issued will be limited to no more than a cumulative \$100,000 for the phase, unless a waiver is granted to ER 1105-2-100, Appendix F. To minimize the need for FADs, the Program Manager will attempt to arrange the "take" in each District to equal its "put," although there will be some gaining and some losing Districts. Surplus funds not needed for affordable projects in a given quarter will remain on the original projects.
- Districts may approve reallocations of up to \$1,000 to CAP Coordination.
- Districts may approve reallocations to projects that are on the list of affordable projects and have executed agreements for the applicable phase, so long as the cumulative net allocations and reallocations to the projects for the FY are no greater than their capabilities for the FY.
- Should the quarterly capability for an affordable project increase, or should the affordable project become eligible for additional assigned funds (such as when an agreement is signed) during a fiscal quarter, the MSC may request that the Program Manager distribute or arrange reallocation of additional funds to the affordable project.
- Based on updates to estimates, the Program Manager may add projects to the list of affordable projects, in which case the Program Manager will assign funds to the added projects.

d. Power Marketing Administration (PMA) Funding. When authorized, specific power purpose funding provided by the Power Marketing Administration (Specific Power) that are not part of the Federal appropriation may be 100% available, once apportioned.

e. Inland Waterway Projects.

(1) Inland waterway projects funded only from the general fund pursuant to Public Law 111-85 will be funded only from the general fund during the CR period. Likewise, inland waterway projects cost shared from the Inland Waterways Trust Fund (IWTF) pursuant to Public Law 111-85 will be cost shared during the CR period.

(2) To ensure that allotments of IWTF funds remain within the amount available in the IWTF, CECW-I will include, in the "paper FADs" issued during the CR period, allotment limitations for projects funded from the IWTF.

(3) Reservations of funds on any continuing contract for IWTF-funded projects must be made in increments no less frequent than monthly.

(4) No new contracts using the continuing contract authority, which includes incrementally funded contracts, may be advertised or awarded for inland waterways projects during the CR period.

(5) IWTF funds should be allotted to projects using account 3122, category-class-subclass 310. Funds are no longer allotted in account 96X8861.

(6) In accordance with Reference 3.c., all new contract awards and other financial commitments for inland waterways projects require the prior approval of the ASA(CW).

f. Execution Following Enactment and Pending Apportionment of Annual Appropriations.

(1) After the President signs an appropriations act into law, OMB automatic apportionment of CR funds terminates. Agencies must submit SF132 apportionment requests to OMB for approval. OMB approval may take as much as 30 days. Volume 3, chapter 2, section 020504 of the DoD Financial Management Regulation (FMR) extends automatic apportionment for all DoD activities during this 30-day hiatus to the extent obligations are "reasonable and customary for the time period." To ensure that these criteria are met, HQUSACE will issue another 30-day increment of funding by FAD using the same formula and methodology as was used during the CR period.

(2) Allotments of funds during the 30-day period pending apportionment should be consistent with the FY 2011 appropriations act and accompanying statement of managers. Allotments during this time should not necessitate later reconciliations.

(3) The other guidance in paragraphs 4.a. through 4.e. remains in effect during the period pending apportionment as during the CR period.

g. Reconciliation. Where funds allotted to a project in CEFMS differ from the initial work allowance, the Division, District, or FOA will reconcile the two, either by adjusting allotments or by adjusting work allowances using the REC, Reconciliation, code in P2-OFA.

**5. Reimbursable Program.** The following guidance will govern Civil Works reimbursed program activities during the CR period.

a. Transfer appropriations under agency symbol 96 may be obligated to the extent that obligation and/or contract authority is available, unless otherwise advised by HQUSACE or the transferring agencies.

b. Reimbursable work may proceed to the extent that activities have received valid reimbursable orders from customers.

**6. Points of Contact.** Questions regarding this guidance should be directed to Evelyn Specht, CERM-BC, 202-761-1073 for Resource Management Directorate matters, or Mark Mugler, CECW-IP, 202-761-4103 for Civil Works Program Integration matters. Questions particular to appropriations should be addressed to Margaret Gaffney-Smith, CECW-CO, 202-761-8560 for Regulatory Program; Cheryl Hill, CERM-B, 202-761-1104 for Expenses; and Mark Mugler for other appropriations.